



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,068	08/26/2003	T. Wade Fallin	13447.37	3366
44270	7590	66/24/2009	EXAMINER	
MEDICINELODGE INC. 124 South 600 West LOGAN, UT 84321			RYCKMAN, MELISSA K	
ART UNIT	PAPER NUMBER			
	3773			
MAIL DATE	DELIVERY MODE			
06/24/2009	PAPER			

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/648,068	<b>Applicant(s)</b> FALLIN ET AL.
	<b>Examiner</b> MELISSA RYCKMAN	<b>Art Unit</b> 3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 4/6/09.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-44 is/are pending in the application.

4a) Of the above claim(s) 10 and 39-41 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-9, 11-38 and 42-44 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-166/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

### **DETAILED ACTION**

This office action is in response to claims filed 4/6/09.

#### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-6,8,9,11-33,35,37,38, and 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simonson (U.S. Patent No. 7,008,431) and further in view of Fischer (U.S. Patent No. 5,006,113) and Storz (U.S. Patent No. 4,449,532).

Simonson teaches three elongate bodies (Fig. 2) with passageways (from proximal to distal end), the second (12) being external of the first (12). The second dilator is shorter than the first dilator (Fig. 2). The first dilator being configured to receive the guidewire (14). Storz teaches a method of dilating bodily tissue, including inserting a first dilator and advancing the second over the first.

Simonson teaches the claimed invention but does not teach a circular dilator with mating members that are a bounded thread track preventing rotation, however Storz teaches a circular dilator and Fisher teaches a threaded cannula, to prevent free rotation (Fig. 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have a circular dilator of Storz as this is advantageous in different medical applications. It would have been obvious to one of ordinary skill in the art to use the threads of Fishers as this prevents free rotation, which is necessary to maintain the functionality of Simonson, as the device of Simonson prevent free rotation.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 7 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simonson (U.S. Patent No. 7,008,431) and further in view of Fischer (U.S. Patent No. 5,006,113) and Storz (U.S. Patent No. 4,449,532).as applied to claims 1 and 31 above and further in view of Smith (U.S. Patent No. 4,862,891).

Simonson, Storz and Fisher teach the claimed invention but does not specify the geometry of the dilators, however Smith teaches tapered frustroconical configuration (Fig. 1). It would have been obvious to one of ordinary skill in the art to have a frustroconical configuration as this allows for smoother access into the tissue.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA RYCKMAN whose telephone number is (571)272-9969. The examiner can normally be reached on Monday thru Friday 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571)-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MKR  
/Melissa Ryckman/  
Examiner, Art Unit 3773

/(Jackie) Tan-Uyen T. Ho/

Application/Control Number: 10/648,068

Art Unit: 3773

Page 5

Supervisory Patent Examiner, Art Unit 3773